BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber 'Carrier	)	
Selection Changes Provisions of the	)	CC Docket No. 94-129
Telecommunications Act of 1996	)	
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

AMERITECH REPLY

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SUMMARY

In its Comments, Ameritech provided compelling evidence that slamming is fast becoming a problem not only in the long-distance market, but other markets as well, especially the intraLATA toll market. A number of commenters echo these concerns. As these comments make clear, it is not enough simply for the Commission to specify verification procedures for preferred carrier (PC) changes. To ensure the integrity of the sales and verification processes, the Commission must, at a minimum, require all carriers who sell multiple services to separately identify and describe each service during both the sales and verification process. Carriers must be required, in particular, to distinguish between or among interLATA, intraLATA, and local exchange services (even if the carrier happens to be marketing them as a bundled package), and to describe those services in terms customers are likely to understand.

There was virtually unanimous agreement in the record among consumer advocates and State Public Service Commissions that PC protection plays a critical role in protecting consumers from slamming. Many of these same entities recognize, however, as did Ameritech in its Comments, that PC protection programs can be abused. To prevent the abuses cited, the Commission should take the following measures. First, it should prescribe minimum informational requirements for all PC protection solicitations, including requirements that such solicitations: (i) clearly explain what PC protection is and the abuse to which it is directed; (ii) clearly indicate the services that would be covered; (iii) inform

customers of precisely how they may remove PC protection from their account; and (iv) inform customers of any charge associated with placing or lifting PC protection. Second, the Commission should require that there be simple, but secure, procedures by which consumers may lift PC protection. One approach would be to adopt the recommendation of the Public Utilities Commission of Ohio that LECs allow 3-way conference calls during normal business hours, an option Ameritech already makes available. In addition, the Commission should permit carriers to use voice response units that require consumers to enter unique customer identifying information, such as the last four digits of their social security number. Third, LECs offering PC protection should be required to make it available on nondiscriminatory terms to all of their customers, regardless of which carriers those customers use for their toll services. In addition, Ameritech would not oppose a requirement that LECs make available to other carriers lists of all customers who have elected PC protection, provided that: (i) this requirement extends to all facilities-based LECs, and not just ILECs; (ii) the Commission prohibits carriers from using these lists to identify customers as telemarketing targets; and (iii) LECs receive compensation for any expenses incurred in making this information available.

On the other hand, Ameritech continues to oppose in the strongest terms the suggestion of some IXCs/CLECs that the Commission prohibit ILECs from providing PC protection to their customers for some period of time after a market has been opened to competition. These proposals are unfair,

unnecessary, and contrary to the interests of consumers. Ameritech also opposes suggestions that the same verification procedures that are available to implement a PC change or PC protection should also be available to remove PC protection.

In its Comments, Ameritech stated that it does not oppose reasonable safeguards to protect against anticompetitive conduct in the processing of PC changes. It argued, however, that any such rules must apply to all executing carriers, including facilities-based CLECs. Significantly, not a single consumer advocate or State Public Service Commission disagrees. While these parties vary in their views as to what, if any, safeguards should apply to executing carriers, not one of them suggests safeguards for ILECs only.

With respect to the specifics of such rules, Ameritech does not oppose a rule that would prohibit any LEC from sending marketing or other promotional materials to customers pending the processing of a PC change. Ameritech does not engage in this practice, and believes it would not be unreasonable for the Commission to prohibit it.

On the other hand, the Commission should not restrict LECs from engaging in winback efforts after they have implemented a PC change. Those types of legitimate winback efforts are not anticompetitive; they are what competition is all about. LECs have no special advantage in conducting winback efforts after a PC change has been implemented. Ameritech makes available to all carriers information on customers that have left them for another carrier, and

Ameritech's competitors receive this information at the same time as Ameritech's own retail units (within a day or two of the execution of the PC change).

Ameritech also does not oppose a requirement that all LECs that execute PC changes file periodic reports comparing the timeliness with which they process their own PC changes and those of their affiliates, on the one hand, with those of their competitors, on the other.

The Commission should also reject requests that it impose unique verification obligations on LECs, such as requirements that LECs (but not other carriers) verify all inbound sales and/or that they be limited to third party verification procedures. These proposals are based on the erroneous premise that a carrier that executes its own PC change is somehow more able to engage in slamming than a carrier that must submit its PC changes to another carrier for execution.

With respect to inbound verification, Ameritech recommends that the Commission require inbound verification only of carriers that appear to be engaging in excessive slamming. Ameritech proposes, further, that the Commission modify its verification requirements in one minor respect to permit carriers who must verify inbound sales to transfer customers to a voice response unit, which would prompt the caller for the information necessary to complete the verification. This verification procedure is both more reliable and more cost-effective than those currently specified in Commission rules.

Some IXCs argue that the proposed liability rules should apply only to intentional slams, which they generally define as a slam that takes place without any verification at all. Ameritech opposes these limitations on the liability rules. It has been Ameritech's experience that the verification process is subject to abuse. For example, Ameritech has found that some verifiers obfuscate the distinction between interLATA and intraLATA services, or engage in other practices that, in purpose or effect, deceive and confuse customers. It has found further that verifiers sometimes attempt to verify sales that have not been made.

Ameritech agrees with commenters who argue that slamming by switchless resellers is a serious problem. Ameritech urges the Commission to require switchless resellers to obtain their carrier identification code (CIC) - a solution that is now available for the first time in light of the industry's transition from a three-digit to a four-digit CIC.

Finally, Ameritech opposes suggestions that the Commission transfer PC administration functions to a third party administrator, asks the Commission to clarify that the rules adopted in this proceeding do not apply to commercial mobile radio service (CMRS) providers, and urges the Commision to address in more detail billing issues raised by its proposed liability rules.

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AMERITECH REPLY

The Ameritech Operating Companies (Ameritech) respectfully submit this Reply to Comments in the above-captioned proceeding. In its Comments, Ameritech expressed deep concern over the pervasiveness of slamming and urged the Commission to crack down on slamming more aggressively than it has in the past. To this end, Ameritech urged the Commission, *inter alia,* to:

- more clearly and comprehensively define slamming to prevent and punish deceptive marketing practices that mislead customers, either actively or by omission, as to the nature of the presubscribed carrier (PC) change they are being asked to make;

- adopt streamlined procedures to identify and protect consumers from repeat or habitual slammers;

- continue encouraging the use of PC freezes (sometimes hereinafter referred to as PC protection), while adopting rules to ensure that: (i) consumers are fully and accurately informed of their rights and obligations when they elect PC protection, (ii) there are simple, but secure, procedures by which consumers can lift PC protection, and (iii) PC protection is made available on nondiscriminatory terms;

- treat all entities that process PC changes alike - regardless of their status as incumbent local exchange carrier (ILEC) or a so-called competitive local exchange carrier (CLEC), or a facilities-based interexchange carrier (IXC) that is asked to switch a customer's account to a reseller of its services;

- eliminate the welcome package verification option, while revising its rules to permit greater use of voice response units - which allow for a more reliable and cost-effective verification process.

There is strong support in the record for each of these positions. There is nearly unanimous agreement, for example, that the Commission must take aggressive measures to curb slamming, and various consumer advocates, such as the National Association of Attorneys General (NAAG), highlight the need for rules that address deceptive marketing practices. There is also universal recognition of the significant benefits of PC protection, as well as the need to ensure that such programs are fairly and properly publicized and implemented. Likewise, with the exception of certain IXCs/CLECs - who view every Commission proceeding merely as an opportunity to game the regulatory process to their own competitive advantage - there is broad consensus that any rules applying to the execution of PC-changes should apply to *all* carriers that execute such changes, including CLECs. Indeed, of the 17 comments received from State Public Service Commissions and consumer advocates, not one recommended that the Commission adopt special rules for ILECs that would not likewise apply to CLECs.

Of course, in a record this large, there are always the outliers. There were comments from ACTA, for example, which assert that slamming is not nearly the problem it is made out to be, and which excoriate the Commission for

tarnishing the reputation of small IXCs through what it characterizes as "ridiculous and deliberately prejudicial tactics" chosen "to favor large, more politically potent carriers."[1] There were comments from Sprint, which paint slamming as a problem that is largely attributable to the incentives of ILECs to tarnish the reputations of IXCs.[2] And there were comments from CompTel, which audaciously urge the Commission to focus, not on the abuses its own members have perpetrated on consumers - abuses which have led to a meteoric rise in the number of slamming complaints and prompted the introduction of no less than six anti-slamming measures in Congress less than two years after the enactment of section 258 - but rather on "eliminating and preventing incumbent LEC gaming of the PC-selection process."[3]

The Commission should view these comments with the disdain they warrant. Indeed, to the extent they couple their suggested *laissez-faire* approach for IXCs and CLECs with stringent and burdensome proposals for ILECs, these comments lack even the semblance of credibility and balance. The Commission should focus instead on the more considered voices of consumer advocates, State Public Service Commissions, LECs, and IXCs, such as Working Assets and, in many respects, AT&T, who paint a different picture from those who view this proceeding as nothing more than just another opportunity to dump on ILECs.

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1 ACTA Comments at 4-9.

2 Sprint Comments at 1-20.

3 CompTel Comments at 1.

While these parties by no means agree on every proposal advanced by the Commission, they do offer a constructive dialogue on how best to address the slamming problem. Ameritech welcomes the opportunity to participate further in this dialogue and replies more specifically to the comments in the pages that follow.

A. The Commission Must Modify its Slamming Rules to Protect Consumers More Effectively Against Deceptive and Abusive Tactics Used to Obtain Purported Authorization.

In its Comments, Ameritech provided compelling evidence that slamming is fast becoming a problem not only in the long-distance market, but in other markets as well, especially the intraLATA toll market. Ameritech explained that many consumers do not understand the concept of local access transport area (LATA) boundaries or the differences between interLATA and intraLATA toll services, and that IXCs have been doing their best to exploit this confusion to their advantage. It urged the Commission to establish requirements and parameters to ensure that all services that a carrier is marketing are clearly and accurately identified and described, both in the verification process and the sales contact.

A number of commenters echo the need for such rules. For example, US West notes that in a recent survey of 100,000 customers whose intraLATA toll service was switched, BellSouth found that over 42% had no idea that the switch

had taken place.[4] These results, US West reports, are consistent with its own experience. They are also remarkably consistent with Ameritech's own survey results, as described in Ameritech's Comments.[5] US West, whose comments otherwise generally eschew stricter regulation in favor of more aggressive enforcement of existing rules, concedes the need for regulatory changes "to make clear a carrier's obligation for honesty and fair dealing" and to require carriers "to make more clear exactly what services are going to be affected by a carrier change[.]"[6] It proposes, in particular, that carriers be prohibited from changing or freezing a PC "unless full and fair disclosure of the types of services involved are explained in language calculated to be understood by the subscriber and the effects of the change of carrier as to the services involved, including the fact that there will be a substitution of the soliciting carrier for the existing carrier, are made in the language spoken by the subscriber."[7]

In the same vein, MCI reports: "MCI has found that there is significant consumer confusion about the various types of calling (local, interexhange, local toll)."[8] It urges the Commission to adopt uniform verification standards for the

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4 US West Comments at 25.

5 Ameritech Comments at 5-6.

6 US West Comments at 5-6.

7 Id. at 27.

8 MCI Comments at 3.

three types of services - a proposal Ameritech believes is necessary, but not sufficient, for addressing this confusion.

Other commenters describe in more general terms the limitless ingenuity of slammers in devising deceptive marketing practices. For example, the National Consumers League notes that "[t]he creativity of slammers is boundless," and urges the Commission to develop rules that address various types of unfair and deceptive PC change practices.[9] NAAG, attaching transcripts of purported verifications to document its claims, notes that "[s]ome carriers have taken advantage of the absence of specific requirements and have devised verification methods that further prior misrepresentations and compound consumer confusion and misunderstanding."[10] It urges the Commission to prohibit deceptive or abusive PC-change tactics and, more specifically, to "define format and content, and require that material terms such as are mandated for LOAs be clearly and conspicuously disclosed in the third party verification process."[11]

As these comments make clear, it is not enough simply for the Commission to specify verification procedures for PC changes. Carriers have demonstrated remarkable creativity in devising slamming schemes; it should be taken as a given that, unless constrained by the Commission, they will exploit

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[9] See e.g. National Consumers League Comments at 4-10, urging the Commission to develop rules that address various types of unfair and deceptive PC-change practices.

[10] NAAG Comments at 17.

[11] Id.

consumer confusion - actively and/or by omission - when marketing multiple services. Therefore, to ensure the integrity of the sales and verification processes, the Commission must, at a minimum, require all carriers who sell multiple services to separately identify and describe each service during both the sales and verification process. Carriers must be required, in particular, to distinguish between or among interLATA, intraLATA, and local exchange services (even if the carrier happens to be marketing them as a bundled package), and to describe those services in terms customers are likely to understand.

B. The Commission Should Continue Encouraging PC Protection Programs, While Adopting Rules to Ensure PC Protection is Properly Marketed and Implemented

There was virtually unanimous agreement in the record among consumer advocates and State Public Service Commissions that PC protection plays a critical role in protecting consumers from slamming. For example, the New York State Department of Public Service comments:

> We believe the ability to freeze a customer's service provider has been an appropriate consumer safeguard in the intraLATA and interLATA markets. Indeed, a PC-freeze has been the only slamming prevention protection available to consumers. . . .
>
> PC freezes do not prevent a customer from choosing a carrier, but only provide protection from unscrupulous carriers. Contrary to the position advanced by some, a PC-freeze allows choice in providers and protects customers – it may affect only

> how quickly the choice is implemented. To ban PC-freezes for the minimal delay they may cause under the guise of preserving choice of providers would be to eliminate consumers' only slamming prevention mechanism at this time.
>
> We recommend that all telecommunications carriers be required to offer, at no cost, freeze options to their subscribers, as defined by the Commission.[12]

Echoing these sentiments, the Texas Office of Public Utility Counsel (TOPC) states:

> TOPC strongly supports the development and implementation of tools, like the preferred carrier (PC) freeze, that are designed to protect consumers against slamming. A PC freeze may be one of the customer's strongest weapons against slamming because the freeze prevents an unauthorized change from ever occurring, rather than punishing the slammer only after the change is discovered.[13]

Likewise, the Virginia State Corporation Commission Staff states: "A pic freeze on an account . . . has been found to be the only effective option in a great number of instances for keeping the consumer presubscribed to the carrier of choice."[14]

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[12] New York State Department of Public Service Comments at 8-9.

[13] TOPC Comments at 3.

[14] Virginia State Corporation Commission Staff Comments at 5. See also National Consumers League Comments at 8: ("Carrier freezes give consumers the choice of having added protection in regard to their desired phone service. The option to freeze one's service should be freely offered, as long as it is described fairly and accurately"); NAAG Comments at 11: ("PC-freeze arrangements provide an opportunity for subscribers to protect themselves from slamming. By restricting a subscriber's LEC from acting upon change orders submitted by other carriers, a subscriber can ensure that only personally authorized change orders are put in place"); Public Utility Commission of Texas Comments at 5: ("PC freezes protect consumers while causing little disruption in the marketplace); Pennsylvania Office of Consumer Advocate Comments at 7: ("While the PaOCA continues to fully support the opportunity for consumers to

Many of these same entities recognize, however, as did Ameritech in its Comments, that PC protection programs can be abused, and they urge the Commission to adopt rules to prevent this from happening. Here, again, the comments are remarkably consistent; the same concerns are expressed over and over again--namely, that: (i) customers might not be adequately informed of the services covered by PC protection or how to lift their PC protection;[15] (ii) customer accounts will be "frozen" without customers' authorization or knowledge;[16] and (iii) reasonable means will not be available for lifting PC protection.[17]

IXCs/CLECs echo these very same concerns, along with two others: (i) that LECs will attempt to dissuade customers from changing carriers when those customers contact the LEC to lift their PC protection; and (ii) that PC protection programs will be implemented in a discriminatory manner.[18]

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use a PC Freeze, it is appropriate that such PC Freezes be executed with adequate verification procedures); Tennessee Regulatory Authority Comments at 3 (PC-freeze should be available to all customers at no cost). And see USTA Comments at 7; GTE Comments at 11-14; Cincinnati Bell Telephone Comments at 8-9; SNET Comments at 1-9; Bell Atlantic Comments at 4-5; Brittan Communications International Corp. Comments at 9-10.

[15] National Consumers League Comments at 8; NAAG Comments at 11-12.

[16] Public Utility Commission of Texas Comments at 4; Public Staff - North Carolina Utilities Commission Comments at 4; Pennsylvania Office of Consumer Advocate Comments at 7;

[17] Public Utilities Commission of Ohio Comments at 11.

[18] MCI Comments at 16-17; AT&T Comments at 19-21; Sprint Comments at n. 25; CompTel Comments at 9; Brittan Communications International Corp. Comments at 10; Telecommunications Resellers Association Comments at 22; WorldCom Comments at 9-10.

The way to address these concerns is as spelled out in Ameritech's Comments. First, the Commission should prescribe minimum informational requirements for all PC protection solicitations, including requirements that such solicitations: (i) clearly explain what PC protection is and the abuse to which it is directed; (ii) clearly indicate the services that would be covered; (iii) inform customers of precisely how they may remove PC protection from their account; and (iv) inform customers of any charge associated with placing or lifting PC protection. These requirements will ensure that when consumers opt for PC protection, they are making an informed choice based on complete and accurate information.

Second, the Commission should require that there be simple, but secure, procedures by which consumers may lift PC protection. One approach would be to adopt the recommendation of the Public Utilities Commission of Ohio that LECs allow 3-way conference calls during normal business hours, an option Ameritech already makes available.[19] In addition, the Commission should permit carriers to use voice response units that require consumers to enter unique customer identifying information, such as the last four digits of their social security number.[20] This latter mechanism is not only simple, it offers the

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[19] See Public Utilities Commission of Ohio Comments at 11.

[20] In its Comments, Ameritech meant to say that using customer identifying information to verify the identity of the caller is no less secure than checking the ANI of the line from which the call was placed. Ameritech Comments at 23. Unfortunately, Ameritech inadvertently omitted the critical word "no" from this statement. Ameritech takes this opportunity to correct any misimpression that may have been left.

additional virtue of 24-hour availability, and also eliminates any possibility that a LEC customer service representative would attempt to dissuade the customer from lifting his/her PC protection.[21]

Third, LECs offering PC protection should be required to make it available on nondiscriminatory terms to all of their customers, regardless of which carriers those customers use for their toll services. Thus, PC protection should be equally available to all consumers, and the procedures established by each LEC for electing and lifting PC protection should be blind to the identity of the toll carrier used by the consumer. While this third requirement is not strictly necessary, given pre-existing nondiscrimination requirements to which LECs (particularly ILECs) are subject, any lingering industry concerns could be addressed by making these nondiscrimination requirements explicit.

AT&T and MCI additionally express concern that they lack information about which customers have elected PC protection. They claim that customers do not always remember whether they have PC protection and that, consequently, large numbers of PC changes they submit are rejected. As Ameritech has previously indicated, Ameritech would not oppose a requirement that LECs make available to other carriers lists of all customers who have elected

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[21] MCI claims that during one of its 3-way calls placed to Ameritech to lift slamming protection, an Ameritech representative attempted to dissuade the customer from making the change, and that on one other call, the representative began marketing additional local services, such as caller I.D. and three way calling. Ameritech has no knowledge of the specific circumstances with respect to these allegations; however, it is Ameritech policy not to market to customers who contact Ameritech to lift slamming protection or after deciding to switch to another carrier. These policies are incorporated in information provided to all customer service representatives and sales agents.

PC protection, provided that: (i) this requirement extends to all facilities-based LECs, and not just ILECs; (ii) the Commission prohibits carriers from using these lists to identify customers as telemarketing targets;[22] and (iii) LECs receive compensation for any expenses incurred in making this information available.[23]

On the other hand, Ameritech continues to oppose in the strongest terms the suggestion of some IXCs/CLECs that the Commission prohibit ILECs from providing PC protection to their customers for some period of time after a market has been opened to competition.[24] These proposals are unfair, unnecessary, and contrary to the interests of consumers. They are unfair because they would apply asymmetrically, denying ILECs, but not CLECs or IXCs, the ability to offer their customers an important and coveted option for protecting themselves against fraud. They are unnecesssary because they fail to address any of the legitimate concerns raised in the record as to how slamming protection is marketed and implemented. As noted above and in Ameritech's Comments, concerns that customers may unwittingly "tie themselves" to their

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[22] The New York State Consumer Protection Board also voices strong concern that consumer privacy interests be protected in the event information regarding which consumers have elected PC protection is made widely available. New York State Consumer Protection Board Comments at 14-15. Carriers found to have violated customers' privacy rights, including those reflected in Commission CPNI requirements, should be denied access to any further lists.

[23] This requirement would obviate any need for LECs to include on customer bills notations of all services for which the customer has elected PC protection.

[24] See, e.g. CompTel Comments at 8 (ILECs should be prohibited from offering PC protection to their customers until six months after obtaining section 271 authority in a state or, in the case of an independent LEC, six months after it makes an evidentiary showing that sufficient competition exists in the local and intraLATA services market).

incumbent carrier can be addressed by ensuring that: (i) customers are fully informed of the process for lifting slamming protection; and (ii) such processes are not unduly burdensome. They are contrary to the interests of consumers because they would deny the vast majority of consumers the ability to protect themselves against slamming.[25] In this regard, experience demonstrates that slamming is likely to begin just as soon as a market is opened to competition.

Stripped to their core, these proposals are nothing more than regulatory gamesmanship - requests that the Commission generate ILEC market share loss by making it easier for customers to switch from an ILEC to a CLEC than vice versa. This is not competition; this is intrusion in the marketplace. It is an inappropriate regulatory policy, and it should come as no surprise, therefore, that not a single consumer advocate or State public service commission supports these proposed moratoriums.[26] The Commission should follow this lead and reject these proposals.

Finally, the Commission should likewise reject suggestions that the same verification procedures that are available to implement a PC change or PC

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[25] In the State of Minnesota, consumers are accorded a statutory right to elect PC protection for intrastate services. Telecommunications carriers are required to notify all consumers of this right by December 31, 1997. Minn. Stat. 237.66 (1996).

[26] While the Public Utilities Commission of Ohio prohibits implementation of PC protection before there is any competition for a service, and recommends that the Commission adopt such a policy on a national level, that is a far cry from prohibiting slamming protection after competition has developed. Ameritech does not oppose the Ohio proposal; if competitors are not providing service on a commercial basis, customers are not exposed to the risk of slamming and do not need to protect themselves from it. To suggest, however, as does CompTel and others, that PC protection should remain unavailable even after competitors have begun providing service in a market, is to invite slamming, as Ameritech documented in its Comments. See Ameritech Comments at 3-6.

protection should also be available to remove PC protection. By definition, PC protection is an election by the customer to permit PC changes only upon the customer's personal authorization. To allow PC protection to be lifted based on the representations of carriers who claim to speak on behalf of customers would effectively eliminate the very protection PC protection is designed to offer. It would seize from customers exclusive control over their PC and expose them to the very types of fraud with respect to their PC protection as they are currently experiencing with respect to PC changes. It is a bad idea that should be rejected.

C. Any Necessary Safeguards to Ensure Nondiscriminatory Execution of PC Changes Should Apply to All Carriers that Execute PC Changes

In addition to proposing a moratorium on the ability of ILECs to offer their customers PC protection, a number of IXCs/CLECs suggest that various other requirements be imposed uniquely on ILECs. They urge, for example, that ILECs, but not other carriers - including carriers with a demonstrated history of slamming - be required to verify all inbound calls, and that ILECs be limited to third party verification procedures, to the exclusion of the other verification options available to other carriers. They also propose various limits on the ability of ILECs to market to customers on whose behalf a PC change has been submitted. Finally, they ask that the Commission require ILECs to process all PC changes within a specified period of time (3 or 5 days) or that ILECs be

required to file reports documenting that they do not discriminate in their execution of PC changes.

In its Comments, Ameritech stated that it does not oppose reasonable safeguards to protect against anticompetitive conduct in the processing of PC changes, assuming those safeguards apply to all executing carriers, including facilities-based CLECs. Ameritech explained that facilities-based CLECs actually have a much greater ability than do ILECs to engage in anticompetitive conduct with respect to PC changes they are asked to execute, and that it was consequently a fallacy for the Commission simply to view the issue in terms of who has more customers.[27]

Significantly, not a single consumer advocate or State Public Service Commission disagrees. While these parties vary in their views as to what, if any, safeguards should apply to carriers that execute PC changes, not one of them suggests that safeguards should be imposed uniquely on ILECs. Indeed, some of them quite specifically argue to the contrary. For example, the New York State Department of Public Service argues:

> The NYDPS recommends that incumbent LECs not be subject to different requirements and prohibitions with respect to PC changes solely by virtue of their incumbent status. All carriers should be treated equally and afforded no advantage due to their particular role in the processing of PC change requests.[28]

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[27] See Ameritech Comments at 15-18.

[28] New York State Department of Public Service Comments at 5 (emphasis in original).

In a similar vein, the Public Staff - North Carolina Utilities Commission states:

> The Public Staff does not believe that the incumbent local exchange providers should be subject to different or more stringent requirements than other carriers. Like all carriers, the incumbent local exchange providers have an incentive to convert as many customers as possible to their services. However, the consequences of making unauthorized changes should dissuade the incumbent local providers from making unauthorized changes to the same extent they dissuade any other kind of carrier from doing the same thing.[29]

Ameritech submits that these parties are correct and that any rules governing the execution of PC changes should apply to all carriers that execute PC changes, regardless of their status as incumbent or new entrant, and regardless of the number of PC changes they execute.

Turning next to the question of what those rules should be, a distinction must be made between two types of proposals suggested in the comments: (i) proposals that are intended to ensure that carriers do not engage in anticompetitive conduct in executing PC changes - either by engaging in "winback" marketing prior to processing those changes, or by processing their own PC changes more quickly than those of their competitors; and (ii) proposals that would subject carriers that execute their own PC changes to different verification requirements than other carriers. Ameritech submits that the first

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[29] Public Staff - North Carolina Utilities Commission Comments at 4. See also New York State Consumer Protection Board Comments at 20 (arguing that FCC rules to prohibit anticompetitive conduct should be applicable to all carriers who execute carrier changes, not merely ILECs); Public Utilities Commission of Ohio Comments at 6-7 (no special rules needed for ILECs). And see USTA Comments at 2-3; Bell Atlantic Comments at 6-8.

category of proposals are rationally related to what is at least a theoretical risk associated with the execution of PC changes - more so for CLECs, which are not subject to section 251(c) and 272 requirements, and which may not process PC changes through the same automated procedures used by ILECs. Proposals to impose special verification requirements on carriers that execute PC changes, on the other hand, bear no relation to any increased risk, theoretical or otherwise, that arises when a carrier executes its own PC changes; rather, they appear to be based on the erroneous assumption that a slam is more likely if a carrier executes a PC change on its own behalf than on behalf of a competitor.

Consistent with this distinction, Ameritech does not oppose a rule that would prohibit any LEC from knowingly sending marketing or other promotional materials to customers pending the processing of a PC change. Ameritech does not engage in this practice, and believes it would not be unreasonable for the Commission to prohibit it.

On the other hand, the Commission should not restrict LECs from engaging in winback efforts <u>after</u> they have implemented a PC change. Those types of legitimate winback efforts are not anticompetitive; they are the essence of competition. They are routine practice in the interexchange industry and, indeed, they are largely responsible for the high churn rates that the Commission has cited as evidence of substantial competition in the

interexchange marketplace.[30] LECs have no special advantage in conducting winback efforts after a PC change has been implemented. Ameritech makes available to all carriers information on customers that have left them for another carrier, and Ameritech's competitors receive this information at the same time as Ameritech's own retail units (within a day or two of the execution of the PC change).

Ameritech also does not oppose a requirement that all LECs that execute PC changes file periodic reports comparing the timeliness with which they process their own PC changes and those of their affiliates, on the one hand, with those of their competitors, on the other. While Ameritech does not believe that any evidence has been presented that ILECs have any real ability to engage in undetected discrimination against their competitors in the processing of PC changes, particularly given their section 251 and 272 obligations and the reporting requirements associated therewith, it would not consider discrimination reports to be unreasonable or inappropriate.

The Commission should not, however, require LECs to process all PC change orders within a specified time period, such as 3 or 5 days. While Ameritech does, in fact, process virtually all IXC PC change orders within 24 hours, it cannot commit to processing all PC changes within 3 or even 5 days.[31]

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[30] Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, released October 23, 1995 at para. 63.

[31] Parties who propose three and five day maximums seem to simply pick these numbers out of thin air. There is no factual basis upon which the Commission could conclude that any such standard was reasonable, much less feasible.